

## **Remarks**

### **VoiceMail Message from the Examiner**

The applicants thank the examiner for the voicemail message which the examiner left for the applicants' representative on August 1, 2003. In that voicemail message, the examiner stated that he had approved all the drawing changes proposed by the applicants in the June 12, 2003 reply, except for the proposed change to delete the phrase "A Typical 500 MW Powerplant" from Fig. 1. In the voicemail message, the examiner also stated that he would be issuing a final office action, and that the applicants may take a look at his rebuttal arguments and decide how they want to proceed. The examiner's voicemail message did not contain any other statements.

### **Cancellation of Non-Elected Claims**

In this reply, the applicants have canceled claims 42-60.

### **Drawings**

As a part of this reply, the applicants have made drawing changes which they proposed in the June 12, 2003 reply, and which the examiner approved in the August 8, 2003 office action. The applicants have made one modification to the proposed drawing change in which they suggested removing the reference number 58 from Fig. 1. Instead, in this reply, the applicants have made an equivalent modification by introducing reference number 58 into the specification, as seen in the Amendments to the Specification section above.

The approved drawing changes are reflected in the amended drawings which are located in Appendix A of this reply. In addition, the applicants have maintained the

proposed change to delete the caption from Fig. 1, as seen by the red-ink mark on Fig. 1. In further support of this change, the applicants refer the examiner to the enclosed Declaration of Timothy C. Keener, Ph.D.

#### Amendments to the Specification

The applicants have made several amendments to the specification in order to correct various typographical errors. And, as mentioned in the Drawings section immediately above, the applicants have included the element bearing the reference number 58 so that the specification and Fig. 1 correspond with one another. In making these amendments, the applicants have not introduced any new matter.

#### Declaration of Timothy C. Keener, Ph.D. Regarding Fig. 1

As a part of this reply, the applicants have included the Declaration of Timothy C. Keener, Ph.D. ("Declaration"). As the examiner will see from a reading of the Declaration, Dr. Keener has provided evidence to make clear the point that Fig. 1 is not prior art. In reading the August 8, 2003 office action, the applicants were surprised to see the statement that "[t]he applicants have not offered a 132 declaration swearing that figure 1 is not prior art to the invention of the applicants' claims". See the Response to Arguments, section b) found on page 11 of the detailed action. Until that point, the examiner had given no indication that a Section 132 declaration would be helpful — not even in the voicemail message to the applicants' representative on August 1, 2003, one week before the mailing of the office action. Had the applicants been made aware of a desire for such a declaration sooner, they gladly would have submitted a declaration for the examiner's consideration

well before the August 8, 2003 office action. Nonetheless, the applicants are pleased to provide the examiner with such a declaration at this time.

#### Section 102

Based on Dr. Keener's declaration, as well as the section 102 rebuttal arguments presented by the applicants in the June 12, 2003 reply (incorporated into this reply by reference), the applicants ask the examiner to withdraw the section 102 rejection.

#### Section 103

Based on Dr. Keener's declaration, as well as the section 103 rebuttal arguments presented by the applicants in the June 12, 2003 reply (incorporated into this reply by reference), the applicants ask the examiner to withdraw the section 103 rejection.

#### Petition for Reconsideration and Withdrawal of Final Rejection

The applicants ask the examiner (and the technology center director) to withdraw the finality of the rejections (and of the office action) because the status as "final" is premature. See MPEP 706.07(c) - (e), pages 700-75 - 700-76 (Rev. 1, Feb. 2003), and MPEP 1002.02(c), page 1000-7 (August 2001).

The finality of the office action is premature because, despite the evidence provided by the applicants in the June 12, 2003 reply that Fig. 1 is not prior art, as well as the fact that the examiner left two telephonic "interview" voicemail messages (February 11, 2003 and August 1, 2003) for the applicants' representative asserting the status of Fig. 1 as prior art, it was not until the August 8, 2003 final office action that the examiner made any mention of a Section 132 Declaration. Had the examiner suggested the potential value of such a declaration, even as late as the August 1, 2003 voicemail, the

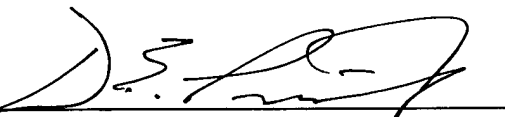
applicants would have been able to prepare a suitable declaration for consideration by the examiner before the examiner prepared and mailed the August 8, 2003 final office action — thereby giving the applicants and the examiner an opportunity to have the claims examined substantively, using legitimate prior art. Given the late notice, however, the applicants were denied that opportunity. Accordingly, the applicants ask the examiner (and the technology center director) to withdraw the finality of the August 8, 2003 office action.

### **Conclusion**

Given the amendments and remarks made above, the applicants look forward to hearing from the examiner that all of the pending claims (claims 1-41) are allowable. If any issues remain, the applicants ask the examiner to call the applicants' representative in order to address such issues swiftly, and to facilitate compact prosecution.

Respectfully submitted,

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**Appendix A**

**Amended Drawings**

**(Three sheets containing six figures)**